

**Cable Communications Agency****CITY OF INDIANAPOLIS****WCTY Government Channel 16**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 200554

In the Matter of

Implementation of Section 302 of  
the Telecommunications Act of 1996

Open Video Systems

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CS Docket # 96-46

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FEDERAL COMMUNICATIONS COMMISSION  
UNITED STATES DEPARTMENT OF COMMERCE**REPLY COMMENTS OF THE CITY OF INDIANAPOLIS**

**THE CITY OF INDIANAPOLIS** respectfully submits these reply comments to the Federal Communications Commission ("Commission" or FCC).

**I. INTRODUCTION**

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC 96-99) ("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter "NLC"), filed joint comments containing specific proposals for implementing that framework.

In their comments, the NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission's rules regarding the PEG and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interests. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent an OVS from becoming a cable system in disguise. Third, the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission's rules must acknowledge the property interests that local governments hold in the local public rights-of-way.

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Separately from these four principles, the **CITY OF INDIANAPOLIS** would like to add a fifth principle; that is that all disputes of a local nature be decided and mediated upon at the local level by an unbiased third party that has experience in resolving disputes, namely that municipality's franchise authority. It is an unreasonable assumption for the FCC to make that in by-passing the franchising process, they make themselves the self-appointed mediators of local disputes. This ideology that local matters are best decided on the federal level gives more credence and validation to the franchising process. Not as a barrier to competition, but as a voice of reason to ensure local community standards are met and to serve as an expeditious mediator in local disputes.

**THE CITY OF INDIANAPOLIS** strongly supports the NLC's comments and urges the Commission to follow these five principles in formulating OVS rules **THE CITY OF INDIANAPOLIS** discusses below its experience in creating and implementing PEG obligations that meet critical local needs.

**II. "DISCUSSION"**

**THE CITY OF INDIANAPOLIS** has implemented previous franchise agreements and is in the process of renewing two cable franchise agreements. The City has attempted to create a level playing field by which all participants must comply. In its renewal process, the City embarked on a comprehensive ascertainment of community needs for cable access. From this, the City hopes to write the language that will meet these community needs in the renewal agreements that will take us into the next millennium.

**THE CITY OF INDIANAPOLIS** has been fair and forthright in settling disputes between access providers and the cable operators. The City has been vigilant in seeing that the operators ensure quality of signal of the access channels that the operator has agreed to carry. The City has worked with the operators in the past in amending provisions of the franchise agreements for access that were not being utilized and whereby the City granted the operators relief from those access provisions.

**THE CITY OF INDIANAPOLIS** has been programming its own access channel for the last twelve years which has served as a window to the process of local government for the community. The local government access channel has received numerous accolades over those years that include Emmy, ACE and CABLEACE awards for outstanding programming.

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The Commission's statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the Commission should, as proposed by NLC, requires OVS operators "to match or negotiate," that is, to match each incumbent cable operator's PEG obligations, or to negotiate agreements acceptable to the affected communities.

The record in this proceeding demonstrates that local governments, as franchising authorities and PEG programmers, play a critical role in ensuring that local communications needs and interests are met.<sup>1</sup> Moreover, local governments, as the National Cable Television Association states, "are in the best position to deliver the Act's intent to accomplish PEG access over open video systems."<sup>2</sup>

<sup>1</sup> See e.g., Comments of the Below-Named Political Subdivisions of the State of Minnesota at 7 (franchising authorities have "considerable experience in successfully negotiating, creating and implementing....PEG obligations"); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. At 34 ("The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules"); and Joint Comments of Cablevision Systems Corporation and the California Cable Television Association at 21 ("Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals").

<sup>2</sup> Comments and Petition for Reconsideration of the National Cable Television Association, Inc. At 33. See also, Comments of MFS Communications Company, Inc. At 27 ("the manner in which OVS operators and/or their customer programmers comply with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable").

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In the **CITY OF INDIANAPOLIS** we have three active PEG channels that serve two cable operators. One is for Public Access, one is for Educational Access and one is for Government Access. Each channel is programming at capacity and has considerable overflow to justify, at the very least, doubling the current access channel allocation. The channels provide for a variety of programming that represents a variety of views and opinions.

By adopting NLC's proposal, the Commission will ensure that PEG access continues to serve local needs and interests in the **CITY OF INDIANAPOLIS**, and will satisfy the Commission's statutory mandate to impose equivalent obligations on OVS and cable operators.

**III. CONCLUSION**

The **CITY OF INDIANAPOLIS** respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by the NLC et al. in their comments.

Respectfully submitted,

**CITY OF INDIANAPOLIS**

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